

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Revision of Part 22 of the  
Commission's Rules Governing  
the Public Mobile Services

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CC Docket No. 92-115

REPLY COMMENTS OF MCCAW CELLULAR COMMUNICATIONS INC.

McCaw Cellular Communications, Inc. ("McCaw") hereby submits its reply comments with respect to the above-captioned Notice of Proposed Rule Making.<sup>1</sup> McCaw, as a major provider of cellular and paging services nationwide, supports the Commission's efforts to streamline licensing procedures and to allow Part 22 licensees greater flexibility in providing service to the public.

McCaw's opening round comments suggested a number of modifications, deletions or additions to the proposed rules. Many of its views were shared by other parties and will not be restated here. In this reply, McCaw responds to comments concerning: 1) the proposed limitation on settlement payments; 2) the obligations of Part 22 licenses regarding AM broadcast antennas; and 3) the proposed rule regarding extensions within previously authorized cellular service area boundaries.

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<sup>1</sup> 7 FCC Rcd 3658 (1992) ("Notice"). Opening comments in this proceeding were filed on October 5, 1992.

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I. THE COMMISSION SHOULD ADOPT THE PROPOSED LIMITATION ON SETTLEMENT PAYMENTS

Proposed Section 22.129 requires Commission approval for the withdrawal or dismissal of mutually exclusive applications and petitions to deny. It also limits the amount of consideration for such actions to the petitioner's "legitimate and prudent expenses." This proposed rule is new for general Part 22 application proceedings, although the Commission adopted similar rules in its cellular renewal and cellular unserved areas proceedings.<sup>2</sup>

Applicants Against Lottery Abuses ("AALA") opposes this blanket limitation on payments in excess of legitimate and prudent expenses. This commenter instead recommends that the Commission deny, on a case-by-case basis, payments from settlements that stem from frivolous petitions to deny.<sup>3</sup> McCaw believes that the rule as proposed should be adopted and opposes the approach suggested by AALA as unnecessary, unworkable, and wasteful of Commission resources.

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<sup>2</sup> Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, 7 FCC Rcd 719, 724-25 (1991), pets. for recon. pending; Amendment of Part 22 of the Commission's Rules To Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and To Modify Other Cellular Rules (CC Docket No. 90-6), FCC 92-472, at ¶¶ 13-17 (Nov. 4, 1992) (Third Report and Order and Memorandum Opinion and Order on Reconsideration) ("Third Report").

<sup>3</sup> AALA Comments at 14-15.

The Commission's proposed rule will deter the filing of mutually exclusive applications and petitions intended primarily to solicit a substantial payoff. By minimizing the prospect of a windfall payment, the rule will discourage speculators who seek private profit at the expense of the public interest. At the same time, the ability of interested parties to submit bona fide filings will be preserved. Thus, the so-called "private attorney general" function can continue to be performed by applicants and petitioners who have a vested interest in serving the public.

The strength of the Commission's proposed settlement policy is twofold: It not only reduces the cost and delay incurred by licensees in providing mobile services to the public, but it also relieves the Commission of the needless burden of processing frivolous petitions to deny. The procedure suggested by AALA, in contrast, would divert limited Commission resources to the review of all settlement arrangements and the investigation of the legitimacy of the underlying filing. Indeed, it is questionable whether the Commission could create and apply satisfactory standards for determining a "frivolous petition." Although some petitions obviously lack any reasonable basis in fact or law, many

petitions are not so blatantly abusive but are nonetheless filed primarily for improper purposes.<sup>4</sup>

In short, McCaw believes that the proposed settlement policy best serves the public interest. The proposal set forth by AALA should be rejected.

II. THE RULES GOVERNING PROTECTION OF AM BROADCAST ANTENNAS SHOULD BE MODIFIED TO SET FORTH MORE CLEARLY THE OBLIGATIONS OF PART 22 LICENSEES

New Section 22.371 proposes to codify existing Commission policy designed to ensure that construction of mobile services towers does not disturb the operation of AM station antennas.<sup>5</sup> McCaw agrees with other commenters that this section should be clarified to indicate that the requirement that Part 22 licensees "restore proper performance" of the AM station only pertains when the Part 22 operations are the cause of the AM facility operating at variance from its authorization.<sup>6</sup> Because many factors -- wholly independent of Part 22 facilities -- can cause an AM station to operate outside the radiation parameters specified

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<sup>4</sup> AALA made the same argument in the unserved areas proceeding. The Commission rejected the proposal, concluding that it "could encourage 'greenmail' (i.e., pay-offs exceeding legitimate and prudent expenses) and also would be administratively burdensome." Third Report at ¶ 15.

<sup>5</sup> Notice, 7 FCC Rcd at 3669.

<sup>6</sup> See, e.g., Telocator Comments at 30 and Att. B at 21; Communications Engineering Services Comments at 1-2; New Par Comments at 12-13.

by the Commission, this section should state explicitly that, for both non-directional and directional AM stations, the Part 22 licensee is responsible only for disturbances directly caused by the licensee's construction or modification of towers within the specified distances.

In addition, the phrase "restore proper performance," used in subsections (a) and (b) of proposed Section 22.371, is susceptible to conflicting meanings. It therefore may generate unnecessary disputes. This situation can be readily resolved by replacing the problematic phrase with language used in the introductory paragraph of the section. Specifically, the Part 22 licensee/applicant would be required by each subsection "to correct disturbance of the AM station antenna pattern which causes operation outside of the radiation parameters specified by the Commission for the AM station."

McCaw agrees with New Par that proposed Section 22.371 should be revised to require Part 22 licensees to conduct a "before and after analysis" for directional AM stations as well as for non-directional stations.<sup>7</sup> As New Par points out, a "partial proof of performance" may not be the most

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<sup>7</sup> New Par Comments at 13-15. Proposed Section 22.371(a) currently calls for the licensee to make before and after measurements of a non-directional AM station's field strength, while proposed Section 22.371(b) requires the licensee to make a "partial proof of performance" to determine whether a directional AM station antenna pattern was affected by construction of Part 22 facilities.

effective means to assess whether the AM antenna pattern has been affected by the Part 22 facilities.<sup>8</sup> McCaw concurs with New Par that a before and after analysis is sufficient for both types of AM antennas. Such measurements accurately describe the effect of the Part 22 facilities on an AM station, whether non-directional or directional. In turn, the Part 22 licensee can then efficiently assess any potential disturbance of the AM pattern and take the necessary steps to address it. This will ensure full compliance with the Commission's policy.

III. PROPOSED SECTION 22.165(e) SHOULD REFLECT  
EXISTING POLICY GOVERNING NEW OR MODIFIED  
TRANSMITTERS WITH EXTENSIONS BEYOND THE MARKET  
BOUNDARY OR AUTHORIZED CGSAS

In its opening comments, McCaw urged the Commission to ensure that Section 22.165, along with Sections 22.123 and 22.163, be revised to reflect the provisions adopted in the unserved areas proceedings.<sup>9</sup> Similarly, McCaw joins New Par in urging the Commission to revise proposed Section 22.165(e) to continue to permit a licensee "to add transmitters (or

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<sup>8</sup> See New Par Comments at 13-14.

<sup>9</sup> McCaw Comments at 32. See Amendment of Part 22 of the Commission's Rules To Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service and To Modify Other Cellular Rules, 6 FCC Rcd 6185 (1991) (First Report and Order and Memorandum Opinion and Order on Reconsideration); 7 FCC Rcd 2449 (1992) (Second Report and Order).

modify existing transmitters) that produce contours extending beyond its CGSA but within its previously authorized de minimis or consented-to extensions."<sup>10</sup> This existing policy<sup>11</sup> should be retained. As recognized by the Commission, it serves the public interest by permitting licensees to make minor changes in an expeditious manner and thus providing service more quickly to the public.<sup>12</sup>

#### IV. CONCLUSION

As McCaw indicated in its opening comments, it supports many of the changes contained in the Notice. With the modifications detailed in its opening comments and above, McCaw believes that the revised Part 22 rules will provide a

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<sup>10</sup> New Par Comments at 11 (footnote omitted).

<sup>11</sup> See Northeast Pennsylvania Cellular Telephone Company, 4 FCC Rcd 2064, 2065 (1989) ("a licensee which has already received permission to extend its 39 dBu contours beyond its CGSA may extend another 39 dBu contour into an area which is completely encompassed by a previously authorized 39 dBu contour of the same cellular system without filing an FCC Form 401").

<sup>12</sup> Id.

sound basis for the efficient regulation and operation of  
common carrier mobile services in the public interest.

Respectfully submitted,

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